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July 10, 2008

**Via ECF Filing**

**Re:** 08 Civ. 5471 (HB)

Ousama Karawia and International Protective Services Inc. d/b/a ISI v. United States  
Department of Labor

Dear Clerk:

Plaintiff attempted to file the Reply Brief along with supporting documents yesterday evening and ran into technical problems up until 9:00 PM on July 9, 2008. A copy was submitted to the Court's Chambers as well as to opposing counsel to ensure that they timely received it. We are sending this letter as the ECF help site states that we are to file such a statement explaining the "delayed filing". After speaking with the Clerk on the morning of July 10, 2008 I was able to file the Reply Brief and supporting documents. The Brief and Exhibit 1-4 were filed first and along with this letter Exhibits 5 and 6 are being filed.

Very truly yours,

---

/s/ Sam Zalman Gdanski



**INTERNATIONAL SERVICES, INC.**  
**SECURITY AND INVESTIGATIONS**

3771 242ND Street, Suite 205  
Torrance, CA 90505  
(310) 791-5015

State License No. PPO 11025

and Bonded

24 hrs. Service

**San Francisco Municipal Transportation Agency**  
**One South Van Ness Avenue, 7th Floor**  
**San Francisco, CA 94103**

**ATTN: Lorraine R. Fuqua**

Answer to San Francisco Municipal Transportation Agency

Answers Certification Regarding Debarment, Suspension and other Responsibility Matters

The Company is not presently debarred. It has been proposed for debarment since mid 2003 by US DoI for matters we believe the company is not liable. The Company is administratively challenging this and if necessary will take this to the US District Court for the Southern District of New York.

At the outset ISI will answer and cooperate in any questions that the SFMTA has.

We also wish to point out a 9<sup>th</sup> circuit case directly on point. . Silverman v. U.S. Department of Defense, 817 F. Supp. 846, (1993).

We believe after you evaluate the answers you will find that ISI and its Officers and employees possess the requisite current responsibility required of a government contractor. The ultimate inquiry in a debarment must be directed to the "present responsibility" of the contractor. The agency is required to carefully consider any favorable evidence of responsibility to ensure that all findings of responsibility are based on the presence of a realistic threat of harm to the government's proprietary interests. Government contractors must be afforded a meaningful opportunity to overcome a blemished past. Mitigating circumstances should be considered.

ISI had been proposed for debarment by the US Department of Labor since 2003 and has been internally contesting the same within the US Department of Labor for the past four years in an administrative dispute. Despite the fact that ISI was proposed for debarment in 2003, during the last 4 years, because of its excellent performance and pricing, ISI was awarded numerous California municipal Contracts, and various commercial contracts including contracts with Fortune 500 companies.

Los Angeles, CA  
1801 Beverly Blvd.  
Los Angeles, CA 90057  
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San Diego, CA  
5494 Weathers Place, #100  
San Diego, CA 92121  
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Oakland, CA  
80 Swan Way, Ste. 275  
Oakland, CA 94617  
(510) 614-9245

Seattle/Portland  
618 Industry Drive  
Tukwila, WA  
(206) 394-1360

Sacramento, CA  
1111 Howe Ave., Ste. 63  
Sacramento, CA 95825  
(916) 448-0707

Ontario, CA  
3595 Inland Empire Blvd.  
Ontario, CA 91764  
(909) 937-8000



Mitigating Circumstances of Debarment and Remedial Action

The debarment proceedings related to activities which occurred in the wake of the 9-11 tragedies in New York. The debarment proceedings focused on alleged payroll underpayments. These were caused by massive late payments by the contracting agency, GSA. ISI borrowed money, made all payments and additional procedures were implemented as described more fully below.

ISI has instituted a Code of Conduct. All senior management personnel have attended in person or by Webinar. This policy, along with the steps taken and itemized below, should provide assurances that any instances which occurred in 2002 and prior, should not affect the present responsibility of ISI.

See Sellers v. Kemp, 749 F. Supp. 1001, 1009 (W.D. Mo. 1990), where although HUD had cause for debarment, the Secretary abused her discretion in concluding that no mitigating circumstances existed; Mastercraft Flooring Inc. v. Donovan, 589 F. Supp. 258, 262 (D.D.C. 1984) where the Labor Department acted arbitrarily and capriciously in setting aside ALJ's findings and recommendation that, despite cause for debarment for violations of the Service Contract Act, mitigating factors warranted removing the contractor from a list of ineligible contractors under the Act; and Roemer v. Hoffman, 419 F. Supp. 130, 132 (D.D.C. 1976) setting aside a debarment action because of agency's failure to consider the circumstances surrounding the offense which prompted the debarment action, payment or restitution, and change in the contractor's character since the offense and conviction. ISI has satisfied all of these criteria.

In Trilon Education Corp., 578 F.2d at 1358 (Ct. Cl. 1978) although a party argued that a contract award was invalid because the awardee (i.e) should have been found to be non-responsible due to the prior criminal conviction of the President of the parent corporation, the Court of Claims, in rejecting the argument stated:

Careful analysis of the debarment provisions suggests that even had the contracting officer been cognizant of Mr. Koe's criminal conviction, he would still not have been compelled to make a determination of non-responsibility. Of course, subsequent conduct of the government indicates in fact he might have done so. Nevertheless, just as an individual's criminal conviction leading to debarment need to inevitably be imputed to an affiliated firm, it does not seem that an individual's lack of integrity should necessarily be attributed to a subsidiary firm for purposes of assessing responsibility.



The amount of time that has elapsed since the underlying instances that gave rise to DoL's allegations, all of which occurred prior to October 2002 and have since been rectified, is one of the mitigating factors to be considered in assessing whether, notwithstanding cause, a Respondent is presently responsible. The bulk of these instances concern late payment by the contracting agency, General Services Administration. See, Roemer v. Hoffman, 419 F.Supp. 130, 132 (D.D.C. 1976); see also, 48 C.F.R. § 9.406-1(a)(9). An agency decision must be based on the consideration of all the relevant factors and must be "reasoned and rational". Silverman v. U.S. Department of Defense, 817 F. Supp. 846, (1993). The ultimate inquiry in a debarment must be directed to the "present responsibility" of the contractor. The agency is required to carefully consider any favorable evidence of responsibility to ensure that all findings of responsibility are based on the presence of a realistic threat of harm to the government's proprietary interests. Government contractors must be afforded a meaningful opportunity to overcome a blemished past. Mitigating circumstances should be considered.

Case law has also recognized that the implementation of effective remedial measures is important. ISI has retained the law firm of Gdanski & Gdanski LLP for the last three years, in addition to the instant litigation, for advice on all other government contract matters. This firm was lead counsel in Impressa Construzioni Geom. and Domenico Garufi v. United States, 238 F.3d 1323 (Fed. Cir. 2001) the leading precedent on the issues of the "responsibility" required of government contractors. The impact of the underlying Garufi case on government contractors, and the public at large cannot be overstated. The Government Accountability Office revised its regulations to hear challenges to affirmative determinations of responsibility. In FN Manufacturing, Inc. B-297172, B-297172.2, 2005 Comp. Gen. Proc. Decision Page 212 December 1, 2005, the GAO explained the significant impact the Garufi series of cases had:

"on December 31, 2002 our Bid Protest regulations were revised to add as a specified exception protests 'that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated the statute or regulation.' 67 Fed. Reg. 79, 833, 79, 836 (2002). This change was made in light of a seminal decision from the United States Court of Appeals for the Federal Circuit Impressa Construzioni Geom. and Domenico Garufi v. United States, 238 F.3d 1323 (Fed. Cir. 2001) ("Garufi I"), which held that affirmative determinations of responsibility by contracting officers are reviewable by the Court of Federal Claims under the 'arbitrary and capricious' standard applicable under the Administrative Procedure Act. We explained in the preamble to the revision that it was 'intended to encompass protests where, for example, the protest includes specific evidence that the contracting officer may have ignored information that by its nature, would be expected to have a strong bearing on whether the



awardee should be found responsible.' 67 Fed. Reg. 79, 833, 79, 844; *see also* Verestar Gov't Servs. Group, B-291854, B-291854.2, April 3, 2003, 2003 CPD P 68 at 4."

Also in effect what has occurred historically, is that ISI has been de facto debarred since November 2002. Other federal agencies have recognized that the amount of time that a contractor has been de facto debarred should run and be counted as time served. See Lou Dominick d/b/a Dominick Realty and Appraisal, HUD BCA No. 87-2420-D31, 1987 HUD Lexis 13 (September 30, 1987).

#### Double Jeopardy

In the United States v. Halper, 490 U.S. 435 (1989) the Supreme Court held that a civil sanction can constitute punishment for purposes of the Double Jeopardy clause "when the sanction as applied in the individual case serves the goals of punishment" -- retribution and deterrence. While that Decision involved a civil penalty under the Civil False Claims Act, some argue that Halper could apply to a debarment or suspension action. See generally, After The Fall: Convention Debarment and Double Jeopardy, 21 Pub. Contr. L.J. 355 (Spring 1992).

#### Conclusion

SFMTA should make a determination that ISI and Ousama Karawia currently possesses the requisite responsibility notwithstanding events that occurred more than four and a half years ago.

If you should want any further information about this issue, you can contact me at the number below or you are more than welcome to contact our legal counsel regarding this case. I have listed his contact information below. Mr. Gdanski is available for a telephonic, e-mail correspondence or in person overview to answer any questions you may have or to provide information about the proceedings in United States District Court, Southern District of New York. Sam Z Gdanski, Gdanski & Gdanski LLP, 3 Rockwood Lane, Suffern, New York 10901, Tel: 845 362-4800, Cell: 914 589-0015, e-mail: samgdanski@gdanski.com.



COPY

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1 UNITED STATES OF AMERICA  
2 UNITED STATES DEPARTMENT OF LABOR  
3 NEW YORK, NEW YORK

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4 In the Matter of:

5 INTERNATIONAL SERVICES, INC., and  
6 OUSAMA KARAWIA, Individually and as  
7 President; RICHARD E. DELONG, Individually  
8 and as Vice President of Operations;  
9 and, WILLIAM PEDRICK, Individually and as  
10 Contract Manager, PEGGY ORLANDO, Individually  
11 and as Chief Financial Officer,

Respondents.

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12 CASE NO. 2003-SCA-18

13 201 Varick Street  
14 New York, New York

15 February 11, 2005  
16 2:45 P.M.

17 Examination Before Trial of ROGER  
18 PINNAU, pursuant to Notice, Via Telephone,  
19 taken by and before Renee S. Harris, a Notary  
20 Public and Shorthand Reporter of the State of  
21 New York.

22  
23 ELLEN GRAUER COURT REPORTING CO., LLC.  
24 133 East 58th Street, Suite 1201  
25 New York, New York  
212-750-6434  
Ref:76629B



A P P E A R A N C E S:

OFFICE OF THE SOLICITOR  
Attorneys for United States  
Department of Labor  
201 Varick Street, Room 983  
New York, New York 10014

BY: HAROLD LeMAR, ESQ.  
JENNIFER AMATO

GDANSKI & GDANSKI, LLP  
Attorneys for Defendant  
25 Sherwood Ridge Road  
Pomona, New York 10970

BY: SAM GDANSKI, ESQ.  
(VIA TELEPHONE)

ALSO PRESENT:

OUSAMA KARAWIA (VIA TELEPHONE)  
DAN WEEKS (VIA TELEPHONE)



1 IT IS HERE BY STIPULATED and  
2 agreed by and between the attorneys for the  
3 respective parties here.

4 THAT this deposition may be signed  
5 and sworn to before any officer authorized to  
6 administer an oath with the same force and he  
7 infect as if signed and sworn to before the  
8 officer before whom the deposition was taken.

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1 PINNAU

2 R O G E R P I N N A U, having first been  
3 duly sworn by a Notary Public for and within  
4 the State of New York, upon being examined,  
5 testified as follows:

6 EXAMINATION BY

7 MR. LeMAR:

8 Q. Mr. Pinnau?

9 A. Yes.

10 Q. This is Harold LeMar from the  
11 Department of Labor. By whom are you  
12 employed?

13 A. The Federal Protective Service which  
14 is a division of Homeland Security.

15 Q. And what is your title?

16 A. Contracting officer.

17 Q. And how long have you been with the  
18 Federal Protective Service?

19 A. I don't really recall right now.

20 Q. Is it several years?

21 A. Yes, it's probably a decade.

22 Q. Okay.

23 MR. GDANSKI: It's more like an  
24 eternity; right?

25 Q. And are you familiar with the term



1 PINNAU

2 "FSS"?

3 A. Yes, FSS, I am familiar with that  
4 term.

5 Q. What is that term?

6 A. That's the Federal Supply Service,  
7 which is a division of the General Services  
8 Administration.

9 Q. And are there contractors listed on  
10 the FSS?

11 A. Yes. The Federal Supply Service has  
12 schedule contracts that are listed on  
13 Internet Web sites, and you can look up the  
14 contractors and their contracts.

15 Q. If a contractor is removed from the  
16 FSS, Federal Supply Service, can that  
17 contractor still bid on Federal Service  
18 contracts?

19 A. Yes.

20 Q. Does the Federal government maintain  
21 a central contractor registration?

22 A. Yes.

23 Q. Where?

24 A. It's at crr.gov.

25 Q. Would that be www.crr.gov?



PINNAU

A. Yes.

Q. Is there a listing on that Web site of active vendors for security guard contracts?

A. Yes, there is.

Q. And have you had an opportunity earlier this month to visit that Web site?

A. Yes, I did.

Q. Do you remember the date?

A. February 1.

Q. And how many active vendors for security guard services were listed on the date that you visited that Web site?

A. Over 4,000.

Q. Does GSA maintain a list of security guard contractors on the FSS?

A. Yes.

Q. Where?

A. That's at GSA dot -- let me repeat that. It's at fss.gsa.gov.

Q. And that would be www.fss.gsa.gov?

A. Yes.

Q. And did you have an opportunity earlier this month to visit that Web site?



PINNAU

A. Yes, I did on February 1.

Q. And how many active vendors for security guard services were listed on the date you visited?

A. I think it was 122.

Q. Are all security guard contractors with the federal government listed on the FSS?

A. No.

Q. Does [www.crr.gov](http://www.crr.gov) list International Protective Services, doing business as International Services located in Torrance, California as an active vendor?

A. Yes, it does.

MR. LEMAR: No further questions.

EXAMINATION BY

MR. GDANSKI:

Q. Mr. Pinnau -- am I pronouncing that right?

A. Yes.

Q. My name is Sam Gdanski, and I'm the attorney for ISI and Mr. Karawia. You're in Chicago right now?

A. Yes, I am.



PINNAU

Q. No snow today?

A. No snow. Nice and sunny.

Q. Okay. How long have you been a contracting officer, a number of years?

A. Yes, over a decade.

Q. You're a contracting officer?

A. Yes.

Q. Now, GSA maintains what's known as an exclusive party list, an EPL list?

A. Yes.

Q. Do you know what that is? That's a list of formerly departed contractors; right?

A. Currently debarred contractors, I believe.

Q. When I said "formerly," I meant f-o-r-m-e-r-l-y.

A. Oh, okay.

Q. Apologize for that. Now, do you know what a de facto debarment is?

A. Do you want to explain that to me?

Q. Yes, a de facto means, as it were -- forgive me for this. I don't have the proper Latin. But it's as if someone was debarred, although they were not -- I used the word



PINNAU

formally, f-o-r-m-e-r-l-y, because if you're  
debarred, you're entitled to a due process  
here; is that correct, if you're formally,  
f-o-r-m-a-l-l-y debarred?

A. To my knowledge.

Q. So a de facto debarment is something  
that occurs when, by the actions of the  
government, although they haven't formally  
debarred, they have, in fact, debarred by  
their actions. So I'll -- do you understand  
that?

A. Yes, I understand what you're  
saying.

Q. And when someone is de facto  
debarred, a number of courts can find that  
that is illegal or improper because the  
government hasn't formally -- and I want to  
spell the word, f-o-r-m-a-l-l-y, followed the  
procedures that exist in the Federal  
Acquisition Regulations. So do you  
understand the concept?

A. Yes.

Q. Do you know that on occasion many  
courts have found that the actions of the



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2 government where they have not followed the  
3 procedures of providing these procedural and  
4 due process hearings constitute what's called  
5 a de facto debarment. If the act of the  
6 debarment of the actions of the government in  
7 not giving a contract to the government is  
8 based on a lack of integrity or honesty,  
9 that's generally the criteria for which the  
10 government would debar, among others, a  
11 contractor; do you understand that?

12 MR. LEMAR: I'm going to object to  
13 the question. This seems more like  
14 argument that should go into brief. If  
15 the witness understands the question,  
16 he can answer it.

17 MR. GDANSKI: Just so you  
18 understand, although counsel has  
19 objected, you are required to give an  
20 answer.

21 THE WITNESS: I'm not an attorney.  
22 But I will accept whatever description  
23 that you're giving of that, of a de  
24 facto debarment.

25 Q. Now, in point of fact, just since



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you're testifying on this, I want to call your attention to a number of cases that have found a de facto debarment where the actions of the government denied a contract the opportunity to obtain a contract, if it was based on, at least the government's perception, that the contract lacked the requisite integrity of the responsibility requirement.

MR. LeMAR: I'm going to object to any questions regarding court cases and anything to do with de facto debarment.

Mr. Gdanski, if you want to continue this line of questioning, we're going to have to call Judge Romano and ask him for a ruling.

MR. GDANSKI: That's fine. I just want the witness to understand that you're called not as a fact witness but to rebutte (sic) -- before we move on, that -- maybe it won't be necessary. Let me go -- let me ask you some questions, okay.

So let's defer that unless you want



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2 to do that, but I'll omit the  
3 references to the court cases and move  
4 on with another line of questioning if  
5 that's okay.

6 MR. LeMAR: That's fine.

7 Q. Now, just to be clear, as a  
8 contracting officer, the government and a  
9 contract officer who lets a contract is  
10 supposed to be satisfied that a contractor  
11 has the requisite -- I'm going to put the  
12 word "responsibility" in quotes because  
13 that's a term of art to government  
14 contracting; right, Mr. Pinnau?

15 A. Yes.

16 Q. And do you understand the term  
17 "responsibility" to equate to meaning that a  
18 contractor must have the necessary integrity  
19 to perform on a contract?

20 A. Responsibility to my knowledge  
21 actually includes more than that.

22 Q. Okay. But at least within the  
23 review of responsibility, they have to  
24 determine that the contractor has the  
25 required integrity; is that right?



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A. I think that's part of it.

MR. LEMAR: Okay. Sam, I think we're going a little bit beyond the purpose of this deposition that Judge Romano allowed. Judge Romano allowed rebuttal of the testimony of Mr. Karawia; that ISI was not able to bid on contracts.

If you're -- if you're now going to be going into very basic and general topics, we are going to be here for a long time, and I think that goes beyond the original purpose of the deposition as Judge Romano allowed.

Q. Mr. Pinnau, did Counsel furnish you a list of documents or any documents today to aid in the deposition?

A. No.

Q. Okay. So I'm going to speak to you a document and ask you if you're aware of this. Are you are aware that the contract with ISI was cancelled; right?

A. Hello?

Q. Mr. Pinnau, you are aware that the



1 PINNAU

2 contract that ISI had was cancelled; right?

3 A. I'm aware that the FSS schedule  
4 contract between GSA, Federal Supply Service  
5 and ISI was cancelled.

6 Q. Okay. Well, let's look at -- hold  
7 on, or let me read to you a document and ask  
8 if you're aware of it. Hold on while I find  
9 the citation here. I have in front of me a  
10 letter -- hold on.

11 MR. LeMAR: Sam, do you have an  
12 exhibit number?

13 MR. GDANSKI: Yeah, I'm looking for  
14 it to see if it's in your tab or my  
15 tab.

16 Yes, it's respondent's documents,  
17 Tab 26.

18 MR. LeMAR: Okay. I'm going to  
19 need a minute. Go ahead.

20 Q. This is a letter in front of me,  
21 Mr. Pinnau, from Sheila Brannan; do you know  
22 who she is?

23 A. Yes.

24 Q. In which she -- I'm going to read  
25 the last paragraph.



PINNAU

"Accordingly, pursuant to clause 522.238-73 Cancellation, contract number GS-07F-0195M is cancelled effective October 19, 2002. Modification A001 is enclosed effecting this action."

And it is a modification to the contract that says exactly that; it cancelled that contract. Do you remember that, Mr. Pinnau?

MR. LeMAR: I'm objecting to the question. This is a document the witness doesn't have in front of him. It goes beyond the scope that Judge Romano allowed for this deposition, which was rebuttal of Mr. Karawia's testimony that ISI has been already been debarred.

If the witness doesn't have it in front of him, he can't really testify regarding the document and he's not the author of the document.

MR. GDANSKI: He can testify regarding his knowledge of whether the document existed and whether he's aware of it. He was the contracting officer.



1 PINNAU

2 MR. LeMAR: But it goes beyond the  
3 scope of Judge Romano's allowance of  
4 the deposition.

5 MR. GDANSKI: Just a preparatory  
6 question if you remember that the  
7 contract was cancelled.

8 MR. LeMAR: You can answer if you  
9 can.

10 THE WITNESS: Yes.

11 MR. GDANSKI: Now, Mr. LeMar, let's  
12 go to Respondent's 46.

13 MR. LeMAR: I have it.

14 Q. Okay. Mr. Pinnau, do you remember  
15 or do you know that after the contract was  
16 cancelled some months later, ISI reapplied to  
17 get back on the schedule?

18 A. Excuse me. I just sneezed. Could  
19 you repeat yourself?

20 Q. Yes. Do you remember that after the  
21 cancellation of the contract that ISI  
22 reapplied to get back on the schedule?

23 A. I'm not aware of that because I'm  
24 not with GSA Federal Supply Service.

25 Q. It would have been in May of 2003?



1 PINNAU

2 A. I'm not aware of that. I'm not with  
3 GSA Federal Supply Service.

4 Q. Were you with them in that time  
5 period?

6 A. No. I never have been with GSA  
7 Federal Supply Service.

8 Q. While GSA contracted, you were the  
9 implementing contract for FSS, as it were --  
10 at the same time, I mean?

11 A. Can you rephrase that again?

12 Q. Yeah. You were a contracting  
13 officer with FSS; right?

14 A. No.

15 Q. I'm sorry. With what agency?

16 A. With the Federal Protective Service.

17 Q. And in 2003 was that still part of  
18 GSA, or was it already put off into Homeland  
19 Security?

20 A. On March 1 of 2003, FPS broke off  
21 from GSA and was observed by Department of  
22 Homeland Security.

23 Q. Were you aware in May that GSA  
24 denied ISI the opportunity to get back on the  
25 schedule, finding that they did not possess



1 PINNAU

2 the requisite responsibility and they cited  
3 the Federal Acquisition Regulations saying a  
4 contractor must have a satisfactory  
5 performance record and have a satisfactory  
6 record of integrity and business ethics?

7 MR. LeMAR: I'm objecting to the  
8 question. The witness was not employed  
9 by GSA at the time. However, if the  
10 witness can answer, he can go ahead and  
11 answer.

12 Q. Were you aware of that?

13 A. I don't actually remember. I don't  
14 know if I heard about that or not.

15 Q. Okay.

16 A. I wasn't any part of it.

17 Q. You heard the language I just heard;  
18 that the denial was specifically because GSA  
19 had the perception or the position that ISI  
20 lacked the integrity and responsibility?

21 A. I don't know.

22 Q. Okay. Now, are you aware of the  
23 fact that later in that year, ISI attempted  
24 to get an FAA contract and was similarly  
25 denied that opportunity because FAA also said



PINNAU

they could not make an affirmative determination of ISI's business ethics to be responsible; were you aware of that?

MR. LeMAR: I'm objecting to the question. The witness was not employed by the FAA at the time, and I don't see how he has the foundation to be able to answer the question. However, if he can answer it, he can go ahead.

THE WITNESS: I'm not aware of that at all.

MR. GDANSKI: Okay. I have no further questions. Thank you Mr. Pinnau.

MR. LeMAR: Thank you, Mr. Pinnau. Have a good weekend. Thank you.

(TIME NOTED: 3:01 P.M.)

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ROGER PINNAU



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PINNAU

Subscribed and sworn

to before me this

day of , 2005.

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NOTARY PUBLIC